

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

TERRY CAMPBELL	§	
VS.	§	CIVIL ACTION NO.
NFI MANAGEMENT, INC.	§	SA-07-CA-0335 OG (NN)

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION
TO PRECLUDE EVIDENCE OF PLAINTIFF'S
DAMAGES AND ATTORNEY'S FEES

Terry Campbell, Plaintiff, submits this, her Response to Defendant's Motion to Preclude Evidence of Plaintiff's Damages and Attorney's Fees, and shows as follows:

1. Defendant's motion argues that Plaintiff should have provided calculations of her lost wages and benefits. "This motion addresses Plaintiff's failure to provide any evidence of damages including back pay, front pay and benefits." Defendant's Motion, at p. 1. Yet, this very information is in the possession and control of Defendant. Among the many documents produced by Defendant to Plaintiff is a rather complete record of her earnings at NFI Management, Inc. These documents are bates stamped as Documents Nos. 0066, *et seq.* Defendant might well have a better understanding of Plaintiff's lost earnings than Plaintiff herself. Since, Plaintiff was paid a bonus based in part on the leasing rate at one of the apartment properties.

2. Fed.R..Civ.Pro. Rule 26(a)(1)(A) requires the plaintiff to produce a computation of damages. But, Plaintiff has not calculated her damages. She has no computation to disclose. Indeed, the best source for lost pay appears to be a document produced by Defendant, a Wage Verification paper Bates stamped as NFI 0216. This document shows Plaintiff's annual wages for 2005, her last full year with NFI as \$70,933. See Exhibit A. This is apparently the best source of her lost pay since Plaintiff has not yet been able to locate W-2's for 2005 or 2006.

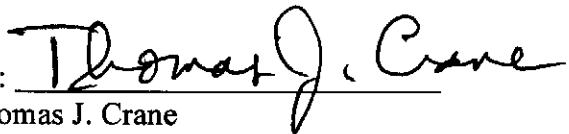
3. Plaintiff has not produced any records regarding attorney's fees or costs of court, because they were not requested. But, even if they were requested, they would not be due or relevant until Plaintiff wins at trial. *See* Western District local Rule CV-7(i). Mr. Harkins was listed as an expert witness regarding the appropriate rate paid to attorneys in the Bexar County

area. He is not an attorney who is performing any work other than possibly testifying about attorney's fees.

WHEREFORE, Plaintiff prays that Defendant's Motion to Exclude Compensatory and Punitive damages and Strike Plaintiff's Jury Demand be denied, and for all relief, at law and in equity, to which she may be entitled.

Respectfully submitted,

ADVOCACY, INCORPORATED

By: 

Thomas J. Crane

T.S.B. No. 05007320

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San Antonio, Texas 78213

(210) 737-0499


(210) 737-2403 fax

ATTORNEY FOR PLAINTIFF

Certificate of Service

I certify that on this 27th day of April, 2008, a true and correct copy of the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system which will send notice of such filing to the following counsel:

Stephanie O'Rourke
Cokinos, Bosien & Young
10999 IH 10 West, Suite 370
San Antonio, Texas 78230


Thomas J. Crane

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
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TERRY CAMPBELL

§

v.

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CIVIL ACTION NO.
SA-07-CA-0335 OG (NN)

NFI MANAGEMENT, INC.

§

ORDER

On this came to be heard Defendant's Motion to Preclude Evidence of Plaintiff's Damages and Attorney's Fees. Having heard argument of counsel and reviewed the motion and attachments, it appears that the motion does not have merit.

It is therefore:

ORDERED that Defendant's motion be DENIED.

SIGNED AND ENTERED this ____ day of _____, 2008.

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

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EXHIBIT A

BENEFITS - CHARGEBACKS
 TEXAS WORKFORCE COMMISSION
 101 E 15TH ST RM 354
 AUSTIN TX 78778-0001

WAGE VERIFICATION NOTICE
 Date Mailed: May 23, 2006

NFI MANAGEMENT COMPANY INC
 PO BOX 4190
 OVERLAND PARK KS 66204-0190

|||||

All dates are shown in month-day-year order.

Account Number: 09-722163-4
 Predecessor:
 Name: TERRI CAMPBELL
 Social Security Number: 464-29-5926

IMPORTANT

Protect Your Interests! Fax, or have any response postmarked on or before 06-06-06 .
 THIS IS NOT A BILL. TWC computes your tax rate using unemployment benefits charged to your account.

WAGE INFORMATION

QUARTER(S) USED	WAGES ON RECORD	SOURCE (If Other Than Quarterly Report)	PAGE	UNIT
JAN FEB MAR 2005	13,794.33	EXAMINATION OF HARDCOPY C-4	1	
APR MAY JUN 2005	15,130.02	EXAMINATION OF HARDCOPY C-4	1	
JUL AUG SEP 2005	17,430.02	EXAMINATION OF HARDCOPY C-4	1	
OCT NOV DEC 2005	24,579.02	EXAMINATION OF HARDCOPY C-4	1	

Maximum Chargeable Amount: \$ 9,100.00 *

The person noted above filed an application for unemployment benefits naming you as his/her last employer before 04-30-06, the effective date of the claim. We used the wages above to calculate the amount of benefits. Please check the amounts against your records. Inaccurate wage information could result in improper payment of unemployment benefits and/or extra charges to your tax account. We base your annual tax rate in part on charges to your account. Report errors promptly. If any amount is incorrect, you may request a review of the TWC wage records to correct possible machine or clerical errors. Wage record accuracy is the only issue for which this notice provides protest rights. A separate notification addressed all other issues including the pay/no pay decision.

Please Note: The Maximum Chargeable Amount is based on the total amount of benefits available to this person. If the person does not draw all available benefits, the actual chargeable amount could be less. TWC calculates your tax rate using only charges for the benefits actually paid. *If, during periods of high unemployment, Texas activates extended benefits, the Maximum Chargeable Amount may increase up to 25 percent, depending on the amount of extended benefits the person actually receives.

INSTRUCTIONS

Reply to this notice only if you want to request a review of TWC wage records. To request a review: (1) Provide a brief explanation of the error in the space below. Attach additional pages if necessary. (2) Enter the correct wage amounts below. (3) Mail a copy of this notice and any attachments to the Texas Workforce Commission address located in the upper left hand corner or FAX them to (512) 936-3250 . If you have any questions, please call (512) 463-2999 .

QUARTER(S)	CORRECTED AMOUNT
JAN FEB MAR 2005	
APR MAY JUN 2005	
JUL AUG SEP 2005	
OCT NOV DEC 2005	

Claim Date: 04-30-06

FOR HEARING IMPAIRED CLIENTS

Relay Texas TDD No.: 1-800-735-2989